IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

LA.App..No. 32 of 2004() & CROSS OBJECTION 41/2006

LAR.95/1995 of SUB COURT, CHERTHALA
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APPELLANT: RESPONDENT:

STATE OF KERALA.

BY GOVERNMENT PLEADER SRI.K.V.MANOJKUMAR.

RESPONDENTS: CLAIMANTS:
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1. D.SANTHAMMA,
MANIBHAVAN, PERUNNERMANGALAM MURI,
MARARIKULAM NORTH VILLAGE.

2. S.D.SONYDATH,
MANIBHAVAN, PERUNNERMANGALAM MURI,
MARARIKULAM NORTH VILLAGE.

3. S.D.PREMDATH,
MANIBHAVAN, PERUNNERMANGALAM MURI,
MARARIKULAM NORTH VILLAGE.

4. CHERTHALA MUNICIPALITY,
REP. BY ITS SECRETARY, MUNICIPAL OFFICE,
CHERTHALA.

BY ADV. SRI.T.G.RAJENDRAN
SRI.J.OM PRAKASH
SRI.T.G.RAJENDRAN

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 20/09/2007, ALONG WITH CO NO. 41 OF 2006 & LAA NO. 64 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.Nos.32 & 64 of 2004

&

Cross Objection 41/2006 in L.A.A.32/04

Dated 20th September, 2007.

J U D G M E N T

Kurian Joseph, J.

These are appeals filed by the State as well as the requisitioning authority, against the judgment and decree in L.A.R.95/95 on the file of the Sub Court, Cherthala. There is also a cross objection by the claimants against the said judgment. The acquisition is for the purpose of setting up a shopping complex for the Cherthala Municipality, the requisitioning authority. Section 4(1) notification was issued on 3.5.1991. The land was taken possession on 12.5.1994. There is no serious dispute that the property is situated at a prime location. Of the entire extent of 43.63 Ares, a major portion is abutting the Ernakulam-Alappuzha National Highway. The rest of the property has only Municipal road access. Therefore, the property was categorized into three. The Land Acquisition Officer awarded Rs.14,854/- for 'A' category, Rs.9,814/- for 'B' category and Rs.5,958/- for the 'C' category. An extent of 50 cents is in 'A' category, 33 cents in 'B' category and 26 cents in 'C' category.

Before the reference court, the claimants relied on Exts.A1 to A6 documents. A Commission also was taken and Ext.X1 is the commission report. Aws.1 and 2 were examined. There is no evidence for the respondents. The basic document also was not produced. Ext.A1 is a document of 1991, Exts.A2 to A5 are of 1984 and Ext.A6 is of 1995. As far as Exts.A1 to A5 are concerned, it was rightly noticed by the reference court that those are transactions pertaining to small extent of land used for commercial purposes. Ext.A1 is executed within a month of the notification. It pertains to transaction of 6 cents of land and the sale consideration is Rs.90,000/-. Exts.A2, A3, A4 and A5 are sale deeds of 1984. Those are all transactions involving only 2 to 3 cents. The reference court has mainly relied on Ext.A6 sale deed executed four years after the publication of the notification. That is in respect of 10 cents of land with a building. The consideration is Rs.3,60,000/-. Rs.60,000/- has been deducted as the value of the building and Rs.3 lakhs is taken as value of the land, i.e., Rs.30,000/- per cent. Taking note of the fact that the same is a post notification document and the extent is only 10 cents, one third has been deducted and the centage value has been fixed as Rs.20,000/-. In view of the comparable nature of

the transaction in Ext.A1, where the land value is Rs.15,000/- per cent, executed at the time of Section 4(1) notification, it cannot be said that the land value fixed by the reference court is on the high side, particularly taking note of the fact that Ext.A1 did not have the road frontage.

2. Learned Government Pleader as well as learned counsel appearing for the Municipality contends that since the claimants did not have any dispute with regard to the categorization of land into three, proportionate to the importance of the extent involved, the reference court erred in applying the uniform value of Rs.49,400/- per Are in respect of the entire extent. We find force in the submission. Admittedly, for the purpose of fixation of land value, the Land Acquisition Officer himself had categorized the property into three, for which the claimants did not have serious objection. In view of the value fixed by the Land Acquisition Officer for the three categories (Rs.14,854/- for 'A' category, Rs.9,814/- for 'B' category and Rs.5,958/- for the 'C' category), we are of the view that a proper fixation of the land value can be made and has to be made by maintaining Rs.49,400/- per Are for A category, by reducing one third from 'A' category and fixing the same as the value of 'B'

and by reducing two third from 'A' category and fixing the same as the value of 'C' category, following the same pattern.

3. Sri.T.G.Rajendran, learned counsel appearing for the Cross Objector submits that the claimants are entitled to have the land value fixed at the rate of Ext.A6 document since admittedly in respect of Exts.A2 to A5 transactions, the valuation is Rs.24,000/- per cent. As we have already noted, Exts.A2 to A5 transactions are in respect of smaller extent of land, purely for commercial purposes. The advantage of the location is also to be taken note in respect of such small extent of property. In the instant case, though situated slightly far from Exts.A2 to A5, the land value has been sustained at Rs.20,000/- per cent. It has to be noted that even for Ext.A6 document produced by the appellant, a transaction made after four years of the notification, the value is only Rs.30,000/- per cent, even assuming the building can be valued at Rs.60,000/-. Though a Commission is taken at the instance of the claimant, there is nothing in the report of the Commission indicating the land value. Therefore, on the basis of the evidence available in the case, it cannot be said that the claimants are entitled to have the land value fixed at the rate of Exts.A2 to A6. Accordingly, we partly allow the appeals

filed by the State and the requisitioning authority. We hold that the respondents/claimants will be entitled to have the land value at Rs.49,400/- per Are for 'A' category, two third of Rs.49,400/- per Are for 'B' category and one third of Rs.49,400/- per Are for 'C' category. The claimants will also be entitled to all eligible statutory benefits including interest on solatium. The appeals are allowed as above and the Cross Objection is dismissed.

KURIAN JOSEPH, JUDGE.

HARUN-UL-RASHID, JUDGE.

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KURIAN JOSEPH &

HARUN-UL-RASHID, JJ

L.A.A. NO. OF 200

J U D G M E N T

Dated 20th September, 2007.